



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,806	10/17/2003	John Caden	1.260.03	9685
4219 7590 03/14/2008 MALLOY & MALLOY 2800 S.W. THIRD AVENUE HISTORIC CORAL WAY MIAMI, FL 33129			EXAMINER RICHMAN, GLENNE	
			ART UNIT	PAPER NUMBER
			3764	
			MAIL DATE	DELIVERY MODE
			03/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/688,806

Applicant(s)

CADEN ET AL.

Examiner

/Glenn Richman/

Art Unit

3764

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20, 22-30 and 32 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19, 20, 22-30 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Allowable Subject Matter

The indicated allowability of claim 21 is withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19, 20, 22-28, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Cox.

Cox discloses a frame including a base disposed on a supporting surface (4), and a track assembly connecting to said base (24), said track assembly including an open end (fig. 2, between 14's) and a substantially closed end (fig. 2, between 12) and two track segments collectively convergent from said open end to said closed end (24, 24, fig. 2), said two track segments angularly inclined relative to the supporting surface fig. 1, two hand grips linearly and reciprocally movable along different ones of said track segments (28, treated as hand grips) a resistance assembly including a line extending along a predetermined path of travel in interconnecting relation to said hand grips, said resistance assembly including a resistance mechanism engaging said line and structured to exert a movement restrictive force thereon (70), and said open end disposed and sufficiently dimensioned to at least partially receive the user therein when the user is in a seated, substantially upright orientation (fig. 1).

As for claims 20, 22-28, and 32, Cox further discloses resistance mechanism is structured to vary the restrictive force and a resulting force required to move said hand grips along said track assembly col. 3, lines 64 – et seq., said track segments are substantially coplanar with one another (fig. 2), a carriage assembly including at least two carriages each supporting a different one of said hand grips (fig. 1), said line is interconnected and movable with said carriages along said path of travel (col. 3, lines 33-46), said two track segments each have a linear, at least partially hollow configuration (fig. 3), said two carriages are movably connected both externally and internally to corresponding ones of said track segments (fig. 3), each of said carriage assemblies includes a roller assembly rotationally engaging interior portions of corresponding ones of said track segments (fig. 3), each of said track segments comprise a rail assembly disposed within and extending along a length thereof (fig.2), said rail assembly and said roller assembly cooperatively structured to movably secure each of said carriages to corresponding ones of said track segments (fig.3), said track assembly is disposed at a predetermined angular inclination relative to the supporting surface (fig.2), said line is adjustable along its length and cooperatively disposed and structured with said handgrips to vary the relative positions of said handgrips upon adjustment of said line (fig. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3764

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox in view of Schmidt.

Cox does not disclose said carriages include a shell disposed externally of and in at least partially surrounding relation to corresponding ones of said track segments (fig. 9).

Schmidt discloses said carriages include a shell disposed externally of and in at least partially surrounding relation to corresponding ones of said track segments (fig. 9).

It would have been obvious to use Schmidt's carriage with Cox's device, as it is well known as taught by Schmidt to use a carriage that surrounds a track segment, for maintaining the carriage on the track.

Schmidt further discloses said track assembly is height adjustable relative to the supporting surface (col. 14, lines 46-52).

Response to Arguments

Applicant's arguments filed 12/17/07 have been fully considered but they are not persuasive.

As to the applicant's arguments:

A detailed review of Figure 2 of the Cox reference, as well as the descriptive portion of the specification relating to Figure 2, clearly indicates that the track segments (24) are angularly inclined relative to one another and are not angularly inclined relative to the supporting surface. It is further noted that Figure 2 of Cox is a top plan view and as such could not and does not provide an indication of the angular inclination of the

track segments (24) relative to the supporting surface. Figure 2 only represents the track segments (24) being angularly oriented relative to one another.

Referring to figures 1, it is clear that the track segments are angularly inclined relative to the supporting surface 4 (90 degrees).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/
Primary Examiner
Art Unit 3764